Supreme Court, U. S.
FILED
NOV 18 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

October Term, 1976

No. 75-1693

STANLEY BLACKLEDGE, Warden
Central Prison, and STATE OF
NORTH CAROLINA

Petitioners

- v. -

GARY DARRELL ALLISON,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED
MAY 22, 1976
CERTIORARI GRANTED OCTOBER 4, 1976

INDEX

RELEVANT DOCKET ENTRIES

(1) 2-15-73 PETITION FOR WRIT OF HABEAS CORPUS filed.

(2) 3-8-73 ANSWER TO PETITION AND MOTION TO DISMISS filed by respondent with copies of state court papers.

(3) 8-28-73 MEMORANDUM OPINION AND ORDER of Judge Gordon denying application for writ of habeas corpus and dismissing action.

(4) 9-4-73 PETITION FOR REHEARING filed by petitioner.

(5) 4-29-74 MEMORANDUM ORDER of Magistrate Smith directing Petitioner to file within 30 days of this Order an affidavit of witness or such other proof of allegation as to unkept promise negotiated in plea bargaining, and to serve a copy of affidavit on respondents; and directing respondent to file such affidavit as may be appropriate 21 days thereafter.

(6) 8-16-74 ORDER of Judge Gordon denying petition for rehearing and dismissing action.

(7) 9-9-74 PETITIONER'S MOTION FOR RECONSIDERATION filed with statement of Dana Eugene Laster.

(8) 9-26-74 ORDER of Judge Gordon denying motion for reconsideration, dismissing action and ordering action closed.

(9) 4-14-76 OPINION of Fourth Circuit, reversing decision of District Court and remanding action.

(10) 5-22-76 PETITION FOR CERTIORARI filed by respondents below.

(11) 10-4-76 PETITION FOR CERTIORARI granted.

RELEVANT EXCERPTS FROM PETITIONER'S APPLICATION FILED FEBRUARY 15, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GARY DARRELL ALLISON, Petitioner.	)	
v.	)	PETITION FOR
DR. STANLEY BLACKLEDGE, Warden	)	WRIT OF
Central Prison, Raleigh, N. C. and	)	HABEAS CORPUS
STATE OF NORTH CAROLINA, Respondent.	)	No. C-71-G-73

* * * * * * *

13. State concisely every ground on which you base your allegation that you are being held in custody unlawfully and in violation of the Constitution or laws of the United States:

(a) Petitioner contends that his guilty plea was induced by an unkept promise, and therefore was not the free and willing choice of the petitioner, and should be set aside by this Court. An unkept bargain which has induced a guilty plea is grounds for relief. SANTOBELLO v. NEW YORK, 404 U.S. 257, 267 (1971).

* * * * * * *

14. State fully and concisely, and in the same order all available evidence, documentary or otherwise, which you claim will support each of the grounds set out in item (13):

(a) The petitioner was charged with and brought to trial on the charges of safe robbery, and two (2) counts of breaking, entering and larceny and possession of burglary tools.

The petitioner was led to believe and did believe, by Mr. Pickard, that he Mr. N. Glenn Pickard had talked the case over with the Solicitor and the Judge, and that if the petitioner

would plea [*sic*] guilty, that he would only get a 10 year sentence of penal servitude. This conversation, where the petitioner was assured that if he plea [*sic*] guilty, he would only get ten years was witnessed by another party other than the petitioner and counsel.

That the petitioner had entered pleas of not guilty and the case was called and a recess was called, and it was at this recess, that the petitioner agreed to plead guilty, because he was told that he had to do so, because the jury was going to find him guilty because his co-defendant was going to plead guilty.

The petitioner believing that he was only going to get a ten year active sentence, allowed himself to be pled guilty to the charge of attempted safe robbery, and was shocked by the Court with a 17-21 year sentence. In MACHRIBRODA v. UNITED STATES, 368 U.S. 487 [*sic*] it was held that a guilty plea induced by a promise was involuntary.

The petitioner was promised by his Attorney, who had consulted presumably with the Judge and Solicitor, that he was only going to get a ten year sentence, and therefore because of this unkept bargain, he is entitled to relief in this Court. An assurance by another that Petitioner would receive a particular sentence therefore since the trial Judge was the only authority as to the length of sentence, the unkept bargain which induced the guilty plea would invalidate the guilty plea. SANTOBELLO v. NEW YORK, SUPRA. [*sic*]

The petitioner is aware of the fact that he was questioned by the trial Judge prior to sentencing, but as he thought he was only going to get ten years, and had been instructed to answer the questions, so that the Court would accept the guilty plea, this fact does not preclude him from raising this matter especially since he was not given the promised sentence by the Court.

It is clear that the United States Supreme Court specifically approved of plea bargaining in SANTOBELLO, SUPRA, and it is equally clear that plea bargaining, when same has been held as in this matter, should appear upon the face of the record. WALTERS v. HARRIS, 460 F. 2d 988 (1972 4th Cir.)

It is clear that the petitioner is entitled to relief in this Court, if in fact, he plead guilty, to the charge of attempted safe robbery, upon the belief that he was only going to receive a ten year sentence. The fact that the Judge, said that he could get more, did not affect, the belief of the petitioner, that he was only going to get a ten year sentence.

It was as said in United States v. Williams, 407 F. 2d 940, 949 n. 13 (4th Cir. 1969):

> ". . . If the Judge, the prosecution, or the defense counsel makes a statement in open court that is contrary to what he has been led to believe, especially as to promises by the prosecutor or his defense counsel, . . . (the defendant) would no more challenge the statement in open court than he would challenge a clergyman's sermon from the pulpit."

Because of the above, it is clear that the response given in Court by this petitioner cannot be used as conclusive proof that the guilty pleas [*sic*] was not induced by a promise that was not kept as contended by the petitioner in this cause, See: REED v. UNITED STATES, 441 F. 2d 569 (9th Cir. 1971); UNITED STATES v. SIMPSON, 436 F. 2d 162 (D.C. Cir. 1970); UNITED STATES v. McCARTHY, 433 F. 2d 591 (1st Cir. 1970); TROTTER v. UNITED STATES, 359 F. 2d 419 (2d Cir. 1966).

WALTERS v. HARRIS, Supra. Pamphlet decision Pages 11-12 says:

> ". . . Surely in the future the United States Supreme Court's approval of plea bargaining, Santobello, Supra, will dispel the doubt about the validity of plea bargaining that has caused plea bargains traditionally to be shrouded in

> secrecy. "We reiterate what we have said before: That when plea bargaining occurs it ought to be spread on the record and publicly disclosed. 'RAINES, Supra, at 530. (I) f (a plea) was induced by promises, the essence of those promises must in some way be made known' Santobello, Supra at ...."

The guilty plea to attempted safe robbery and sentence of 17 to 21 years is invalidated and made involuntary by the unkept promises in this cause of only a ten year maximum sentence, and should be set aside and vacated by this Court, 6th, 6th [*sic*] and 14th Amendments to the Constitution.

* * * * * * *

(Verification omitted in printing)

RESPONDENTS' ANSWER FILED MARCH 8, 1973 IN THE U. S. DISTRICT COURT

(Caption omitted in printing)

The respondent answering and moving to dismiss the petition for writ of habeas corpus filed herein says:

1. The historical allegations of petitioner's application are not denied. It is denied his rights were violated and specifically that there was an unkept plea bargain in his case. It is admitted that petitioner has exhausted his state remedies.

FURTHER ANSWER

1. Petitioner contends his rights were violated because (a) his guilty plea was involuntary having been iduced by an unkept plea bargain; (b) he was not advised of his right to appeal and (c) he did not receive a post-conviction hearing. These contentions merit him no relief.

2. With regard to contentions (a) and (c) respondent adopts its answer filed in the North Carolina Court of Appeals upon petitioner's application for certiorari. It supplements the authority cited with regard to contention (c) by showing the court that the failure to grant a post-conviction hearing is relevant only to the exhaustion of state remedies and defects therein create no independent rights for relief, ROBINSON v. BLACKLEDGE, No. 71-1124 (4th Cir. 1971).

3. As petitioner pled guilty there was no duty to inform him of the right to appeal, SONGER v. COINER, No. 14,818 (4th Cir. 1971), LeDOUX v. PEYTON, No. 13,599 (4th Cir. 1972).

WHEREFORE, respondent having fully answered the petition for writ of habeas corpus filed herein prays that Your Honor will deny the said petitioner's application and that a writ of habeas corpus will not be issued in his behalf.

Respectfully submitted,

ROBERT MORGAN
Attorney General

Richard N. League
Assistant Attorney General

(Verification and certificate of service omitted in printing)

EXCERPTS FROM ATTACHMENT TO RESPONDENTS' ANSWER ORIGINALLY FILED IN NORTH CAROLINA COURT OF APPEALS

* * * * * * *

Petitioner contends that his plea of guilty was involuntarily entered upon a promise by his attorney that if he were to enter such a guilty plea, he would be sentence to no more than ten years imprisonment. The transcript of plea taken in open court evidences that the petitioner was fully aware of the consequences of his entering the plea of guilty to attempted safe robbery. The petitioner testified that he understood that he could be sentenced for a term of ten years to life imprisonment as punishment for the offense to which he was pleading guilty. The petitioner testified that no one had made any promise or threat to induce or influence him to plead guilty to the offense, that he was pleading guilty to attempted safe robbery of his own free will and, that he was in fact guilty.

A plea of guilty entered with advice of counsel is presumptively valid, the burden being upon the petitioner to demonstrate that the plea was not voluntarily made. U.S. ex rel SADLER v. PENNSYLVANIA, 438 F. 2d 997 (3rd Cir. 1970). The petitioner fails to meet the burden. The transcript shows that the petitioner was fully advised of the consequences of his plea, including the maximum sentence that he could receive, and that he was not induced by his attorney to plead guilty to the offense charged. The examination and inquiry by the trial judge is in complete accord with the decision of the Supreme Court of the United States in BOYKIN v. ALABAMA, 395 U.S. 238, 23 L.Ed. 2d 274, 89 S.Ct. 1709 (1969), holding that a trial judge, before accepting a plea of guilty, must make an affirmative showing that the plea was voluntarily and understandingly entered. If the petitioner were able to contest the

voluntariness and his understanding of the consequences of his guilty plea, with the present record before us, the purpose to be served by the requirements of BOYKIN v. ALABAMA, supra, would be of nominal affect.

* * * * * * *

PETITIONER'S INDICTMENT IN ALAMANCE COUNTY SUPERIOR COURT

STATE OF NORTH CAROLINA
County of Alamance
The State of North Carolina
vs.
Gary Darrell Allison
Defendant

File # 71CR15073
In The General Court of Justice
Superior Court Division
January 17, Session, 1972
INDICTMENT — VARIOUS CASES
THREE COUNTS

THE GRAND JURORS FOR THE STATE UPON THEIR OATH PRESENT, That Gary Darrell Allison late of the county of Alamance on the 8th day of December 1971, with force and arms, at and in the County aforesaid, unlawfully, wilfully, and feloniously did break and enter a certain building, to-wit: a store building occupied by Byrd Food Stores, Inc. situated at 717 East Davis Street, Burlington, North Carolina, with the intent to steal, take and carry away the merchandise, chattels, money and other personal property therein situated of the said Byrd Food Stores, Inc. contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

AND THE JURORS FOR THE STATE UPON THEIR OATH FURTHER PRESENT, That on said day and year aforesaid, at and in the County and State aforesaid Gary Darrell Allison late of said County, unlawfully and wilfully, and feloniously did by the use of a wrecking bar, hammer, nail bars and other hand tools attempt to force open the safe of Byrd Food Stores, Inc. situated at 717 East Davis Street, Burlington, North Carolina, used for storing chattels, money and other

valuables contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

AND THE JURORS FOR THE STATE UPON THEIR OATH FURTHER PRESENT, That on said day and year aforesaid, at and in the County and State aforesaid Gary Darrell Allison late of said County, unlawfully and wilfully and feloniously did have in his possession, without lawful excuse, implements of house-breaking, to-wit: crow bar, hammer, nail bars and other hand tools contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

/s/ Pierce
Solicitor

TRANSCRIPT OF PLEA IN ALAMANCE COUNTY SUPERIOR COURT

(Caption omitted in printing)

The Defendant, being first duly sworn, makes the following answers to the questions asked by the Presiding Judge:

1. Are you able to hear and understand my statements and questions? Answer: Yes
2. Are you now under the influence of any alcohol, drugs, narcotics, medicines, or other pills? Answer: No
3. Do you understand that you are charged with the felony of Attempted Safe Cracking? Answer: Yes
4. Has the charge been explained to you, and are you ready for trial? Answer: Yes
5. Do you understand that you have the right to plead not guilty and to be tried by a Jury? Answer: Yes
6. How do you plead to the charge of Attempted Safe Cracking—Guilty, not Guilty, or nolo contendere? Answer: Guilty
7. (a) Are you in fact guilty? (Omit if plea is nolo contendere) Answer: Yes

   (b) (If applicable) Have you had explained to you and do you understand the meaning of a plea of nolo contendere? Answer: .....
8. Do you understand that upon your plea of guilty you could be imprisoned for as much as minimum of 10 years to life? Answer: Yes
9. Have you had time to subpoena witnesses wanted by you? Answer: Yes
10. Have you had time to talk and confer with and have you conferred with your lawyer about this case, and are you satisfied with his services? Answer: Yes

11. Has the Solicitor, or your lawyer, or any policeman, law officer or anyone else made any promises or threat to you to influence you to plead guilty in this case?
Answer: No

12. Do you now freely, understandingly and voluntarily authorize and instruct your lawyer to enter on your behalf a plea of guilty? Answer: Yes

13. Do you have any questions or any statement to make about what I have just said to you? Answer: No

I have read or heard read all of the above questions and answers and understand them, and the answers shown are the ones I gave in open Court, and they are true and correct.

Gary Darrell Allison
Defendant

Sworn to and subscribed before me this 24th day of January, 1972.

AOC-L Form 158
Rev. 10/69

Catherine Sykes, Ass't.
Clerk Superior Court

ADJUDICATION

The undersigned Presiding Judge hereby finds and adjudges:

I. That the defendant, Gary Darrell Allison, was sworn in open Court and the questions were asked him as set forth in the Transcript of Plea by the undersigned Judge, and the answers given thereto by said defendant are as set forth therein.

II. That this defendant, was represented by attorney, M. Glenn Pickard, who was (court appointed); and the defendant through his attorney, in open Court, plead (guilty) to Attempted Safe Cracking as charged in the (warrant) (bill of indictment), of Breaking & Entering, Safe Burglary & Possession of Burglary Tools and in open Court, under oath further informs the Court that:

1. He is and has been fully advised of his rights and the charges against him;

2. He is and has been fully advised of the maximum punishment for said offense(s) charged, and for the offense(s) to which he pleads guilty;

3. He is guilty of the offense(s) to which he pleads guilty;

4. He authorizes his attorney to enter a plea of guilty to said charge(s);

5. He has had ample time to confer with his attorney, and to subpoena witnesses desired by him;

6. He is ready for trial;

7. He is satisfied with the counsel and services of his attorney;

And after further examination by the Court, the Court ascertains, determines and adjudges, that the plea of guilty, by the defendant is freely, understandingly and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency. It is, therefore, ORDERED that his plea of guilty be entered in the record, and that the Transcript of Plea and Adjudication be filed and recorded.

This 24th day of January, 1972.

Marvin Blount Jr.
Judge Presiding

EXCERPTS FROM JUDGMENT AND COMMITMENT IN ALAMANCE COUNTY SUPERIOR COURT

(Caption omitted in printing)

In open court, the defendant appeared for trial upon the charge or charges of Breaking and Entering, Safe Robbery and Possession of Burglary Tools, and thereupon entered a plea of guilty to Attempted Safe Robbery. Transcript of plea and adjudication of acceptance were entered. Defendant appeared with counsel. The court heard evidence for the state and for the defendant. The defendant was given an opportunity to speak and did speak.

Having pleaded guilty of the offense of Attempted Safe Robbery which is a violation of G.S. 14-89 and of the grade of Felony [I]t is ADJUDGED that the defendant be imprisoned for the term of not less than Seventeen (17) nor more than Twenty One (21) years in the custody of the Commissioner of North Carolina Department of Corrections. It is ordered that the defendant be given credit for 51 days spent in jail pending trial.

* * * * * * * *

This 27th day of January, 1972.

Marvin Blount Jr.
Presiding Judge

COURT'S FIRST ORDER DISMISSING CASE FILED AUGUST 28, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

GARY DARRELL ALLISON, Petitioner,	)	
v.	)	
DR. STANLEY BLACKLEDGE, Warden, Central Prison, Raleigh, N. C. and STATE OF NORTH CAROLINA, Respondents.	)	C-71-G-73

MEMORANDUM OPINION AND ORDER

GORDON, Chief Judge

Petitioner is a state prisoner seeking habeas corpus relief. He has been allowed to proceed as a pauper.

Petitioner alleges that his plea of guilty was invalid, that he was not informed of his right to appeal and he has been denied a post-conviction hearing.

The respondents' motion to dismiss will be granted.

Petitioner alleges that counsel "presumably" talked with the Court and solicitor and that counsel told him if he entered a plea of guilty he would get but ten years. Petitioner was sentenced to 17 to 21 years for safe robbery. Petitioner does not otherwise contest the voluntariness of his plea of guilty. A transcript of the plea was furnished with respondents' answer and motion to dismiss and conclusively shows that he was carefully examined by the Court before the plea was accepted. Therefore, it must stand. Predictions of counsel of the duration of a sentence, without more, are not grounds for attacking an otherwise valid plea of guilty. *Swanson v. United States*, 304 F. 2d 865 (8th Cir. 1962).

After the entry of a valid plea of guilty, there is no duty of counsel to inform a defendant of his right to appeal. *Songer v. Coiner*, mem. dec., No. 14,818 (4th Cir., November 4, 1971); *LeDoux v. Peyton*, mem. dec., No. 13,599 (4th Cir., April 25, 1972).

There is no constitutional right to a post-conviction hearing. A post-conviction hearing pertains only to the exhaustion of state remedies. *Robinson v. Blackledge*, mem. dec., No. 71-1124 (4th Cir., September 10, 1971); *Noble v. Sigler*, 351 F. 2d 673 (8th Cir. 1965).

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the application for writ of habeas corpus of Gary Darrell Allison, filed February 15, 1973, be and is hereby denied and the action dismissed.

In accordance with this Court's liberal policy relative to the filing of actions in forma pauperis, 28 U.S.C. § 1915, and in accordance with the intent of Rule 24, Federal Rules of Appellate Procedure, if the petitioner desires to do so, permission to appeal in forma pauperis is hereby granted.

IT IS FURTHER ORDERED that the Clerk mail a certified copy of this Memorandum Opinion and Order to the petitioner at his place of confinement and two certified copies to the Attorney General of the State of North Carolina.

Eugene A. Gordon
United States District Judge

August 27, 1973

EXCERPTS FROM PETITION FOR REHEARING FILED SEPTEMBER 4, 1973 IN U.S. DISTRICT COURT

(Caption omitted in printing)

* * * * * * *

POINT IV

Point 4: An evidentiary hearing is required despite his statement made to the court prior to entry of guilty plea to effect that no promise had been made. Said statement was evidentiary, but NOT conclusory.

POINT V

Point 5: The Court is here limited to deciding whether the was or was not induced by an unkept bargain; that the writ should not be dismissed for failure to state a claim unless it appears beyond doubt that the petitioner can prove no set of facts in support of his claim which would entitled him to relief; that this is not to say that the petitioner can prove these allegations, or that the respondent did not have just cause for accepting the plea. These are matters of proof; that the petitioner contends that his trial counsel breached his promise; that his plea of guilty arised out of and developed from said promise; but that this Court apparent of the opinion that the record conclusively shows that he was carefully examined by the Court below-before the plea was accepted; that therefore, it must stand; that no record has been made as to whether petitioner's counsel did or did not breach his promise, and; that the record is absence of any showing either in law or in fact that the respondent refuted or did not refute that petitioner's counsel did not breach his promise except what the transcript of record shows.

POINT VI

Point 6: In this case, we must look beyond the record. That if it is true that petitioner's counsel told him if entered a plea of guilty he would get but ten years. It then is clear that his

plea bargain would be void. The petitioner has not been given an opportunity to submit his own evidence or controvert the respondents' record. Nor is it clear as to whether or not petitioner's counsel breached his promise and/or told him if he entered a plea of guilty he would get but ten years.

POINT VII

Whether counsel did or did not tell petitioner if he entered a plea of guilty he would get but ten years is a question of truth and requires scientific expression either by voluntary answering or by undergoing cross-examination. There has been no cross-examination of counsel in this case. If it was the Court opinion that that the writ should be dismissed because the record conclusively shows that he was carefully examined by the Court before the plea was accepted, the Court was mistaken. The burden is not met merely by the filing of an answer which controverts the allegations of the writ or which relies solely on Swanson v. United States, 304 F. 2d 865 (8th Cir.-1962). The Supreme Court held that an evidentiary hearing is required despite a petitioner's plea of guilty made to the court prior to entry of guilty plea to effect that no promise had been made; that said statement was evidentiary, but NOT conclusory. United States v. McCarthy, 433 F. 2d 591, 7 CLB 271 (1970). The value of a full evidentiary hearing is exemplified by Townsend v. Sain, 372 U. S. 293 (1963).

* * * * * * *

Respectfully submitted,
/s/ Gary Darrell Allison

(Verification omitted in printing)

MAGISTRATES' ORDER REOPENING CASE FILED APRIL 29, 1974

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA GREENSBORO DIVISION

GARY DARRELL ALLISON, Petitioner,	)	
v.	)	
DR. STANLEY BLACKLEDGE, Warden, Central Prison, Raleigh, N. C. and STATE OF NORTH CAROLINA, Respondents.	)	C-71-G-73

MEMORANDUM ORDER

By Memorandum Opinion and Order entered 28 August 1973 this Court dismissed petitioner's application for a writ of habeas corpus. On September 4, 1973, petitioner, with the aid of Writroom Clerk Daniel Ross, filed a petition for rehearing. Pursuant to Local Rule 50, the action was directed to the attention of the Magistrate for preliminary review.

Petitioner originally alleged that "presumably" his attorney talked with the solicitor and the judge and as a result, his attorney told him he would get but 10 years if he entered a plea of guilty. Petitioner alleges that he has a witness to this conversation with counsel. He maintains that his plea of guilty was entered as a result of his attorney's assurances; that he got more time than was promised; and that he is thus the victim of an unkept promise, negotiated in plea bargaining. By innuendo, he maintains that his answer given to the Court, and recorded as his Transcript of Plea, was in fact false. (See question 11).

It is the responsibility of the petitioner to prove his allegation. Therefore, he is directed to file, within thirty (30) days

from the date of the entry of this order, an affidavit or his witness, and such other proof of his allegation with respect to the promise he maintains was not kept. He is hereby ORDERED to furnish a copy of the affidavit to the respondents. Within twenty-one (21) days thereafter, the respondent is directed to file such affidavits as may be appropriate.

The Clerk is directed to transmit by certified mail, return receipt requested, *deliver to addressee only*, two copies of this Memorandum Order to the petitioner at the North Carolina Department of Correction, Post Office Box 578, Yadkinville, North Carolina, 27055, and two certified copies to the Attorney General of the State of North Carolina.

Herman Amasa Smith
United States Magistrate

26 April 1974

LETTER OF PETITIONER FILED MAY 13, 1974 IN THE UNITED STATES DISTRICT COURT

GARY ALLISON
P. O. Box 578
Yadkinville, N. C.

Honorable Eugene Gordon
Middle District Court
Greensboro, N. C.

Dear Sir:

In regards to case number C-71-G-73 from your court in regards to my co-defendant who has a statement to the court but is unable to have them or it notrized [sic]. He is at the North Carolina Department of Correction at the Graham Unit. If you will order someone to assist him in doing something I will appreciate it very much. It may be necessary to have him taken someplace or a U.S. Marshal to see him. His name Dana Lassiter. Thank you for your help. I remain.

/s/ Gary Allison

LETTER OF PETITIONER RECEIVED BY CLERK MAY 17, 1974

Mr. Gordon:

I am writing this in hopes of acquiring some urgent help from you. This is in reference of [sic] Order No. C-71-G-73 that was filed April 29, 1974 to me. I received a letter from my mother saying that the papers had been Notorized and were torn up by the one that Notorized them. I would appreciate if you could check into this, since it is the only way I have of meeting the Courts Order. My Co-defendant also had a paper signed stating they were torn up but I never received them.

I think the people at Graham Camp are trying to keep me from getting any help. I can't meet the dead line without some help. I would appreciate it if you would find out how true this is. I know my Co-defendant will testify what I've said without a doubt. Please help me in this matter. I pray for the Courts indulgence.

Thank you,
/s/ Gary Darrell Allison

LETTER OF CLERK OF U.S. DISTRICT COURT IN RESPONSE TO PETITIONER'S LETTER RECEIVED MAY 17, 1974 DATED MAY 22, 1974

Mr. Gary Darrell Allison
Post Office Box 578
Yadkinville, North Carolina 27055

Dear Sir:

Re: Allison v. Blackledge, et al;
C-71-G-73

Your second letter to Judge Gordon was referred to me for response.

I suggest that you submit to the Court an affidavit of your mother or anyone else who has first-hand knowledge that a notarized statement on your behalf was destroyed, giving the name of the person who destroyed it and describing the circumstances.

If your co-defendant is willing to make a statement and contends that he cannot get it notarized, I suggest that you have him forward, in his own handwriting, a complete statement of the facts as he knows them, together with the detailed facts concerning his efforts to have his statement notarized.

I am sending a copy of your letter to Judge Gordon, to Mr. Richard N. League, Assistant Attorney General, P. O. Box 629, Raleigh, N. C., and I suggest that you furnish him with copies of any further correspondence you have which bears directly upon the merits of your case.

Very truly yours,
/s/ Carmon J. Stuart

CJS: pk

LETTER OF PETITIONER RECEIVED BY CLERK AUGUST 6, 1974

Mr. Gordon,

I am writing this letter to you as an appeal to you and to the Courts. I would like to explain a few things to your Honor. Is it not in the Constitution under Due Process of Law, that all persons be protected with Equal Protection?

Your Honor, me and my Co-Defendant pleaded guilty to Attempted Safe Robbery which you already know. My court papers and Petition were lost during my transfer so I don't remember the Case Number. Me and my Co-Defendant both had a previous felony conviction. The charge which we were charged with at that time carried 10 years to life. I received 17 to 21 years while my Co-Defendant only received 5 to 8 years. While he received less time than the charged carried and I was given more time than I was promised in the plea bargain, then there is no way that I was given Equal Protection.

Your Honor, I have heard through my people that the statement my Co-defendant was supposed to make was not made because he's afraid of his Parole and Work Release. I think that this should be brought to court and my Co-defendant put under oath on the stand. It just doesn't seem right or Justice for me to get all the time and him so small a sentence.

Here is thanking you in advance for what help you can provide me.

Thank you,

/S/ Gary Darrell Allison

COURT'S SECOND ORDER DISMISSING CASE FILED AUGUST 16, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

GARY DARRELL ALLISON, Petitioner,	)	
v.	)	
DR. STANLEY BLACKLEDGE, Warden, Central Prison, Raleigh, N. C. and STATE OF NORTH CAROLINA, Respondents.	)	C-71-G-73

ORDER

GORDON, Chief Judge

This action was referred to United States Magistrate, Herman Amasa Smith, for preliminary review pursuant to the provisions of 28 U.S.C. § 636(b) and Local Rule 50, Rules of Practice and Procedure. The Magistrate has submitted to the Court a Memorandum and Recommendation.

The Court has examined the files and records of the action and has independently determined that the petition is without merit, and that the relief sought should be denied for the reasons appearing in the Magistrate's Memorandum and Recommendation, which is attached and made a part of this Order.

IT IS HEREBY ORDERED that the petition for rehearing of Gary Darrell Allison, filed September 4, 1973, be and is hereby denied and the action dismissed.

In accordance with this Court's liberal policy relative to the filing of actions in forma pauperis, 28 U.S.C. § 1915, and in accordance with the intent of Rule 24, Federal Rules of Appellate Procedure, if the petitioner desires to do so, permission to appeal in forma pauperis is hereby granted.

IT IS FURTHER ORDERED that the Clerk mail a certified copy of this Order to the petitioner at his place of confinement and two certified copies to the Attorney General of the State of North Carolina.

Eugene A. Gordon
United States District Judge

August 16, 1974

C-71-G-73

MAGISTRATE'S MEMORANDUM AND RECOMMENDATION

Gary Darrell Allison

By Memorandum Opinion and Order entered 28 August 1973, this Court dismissed petitioner's application for a writ of habeas corpus. On September 4, 1973, petitioner, with the aid of a writ room clerk, filed a petition for a rehearing. That petition sought to bring petitioner's plea of guilty within the ambit of *Santobello v. New York*, 404 U. S. 257 (1971). The petitioner claimed that he had witnesses to prove that plea bargaining took place and that the bargain was not kept. On April 29, 1974, a Memorandum Order was entered directing him to file within 30 days from the date of the entry of the Order affidavits of his witnesses with such proof of his allegations as he might be able to muster. The respondents were then allowed to file counter affidavits within 21 days after the receipt of the petitioner's affidavits.

On May 13, 1974, the petitioner addressed a letter to Chief Judge Eugene Gordon which alleged that his codefendant who had a statement to make for the Court was unable to have it notarized. A copy of that letter was sent to the respondents by letter dated May 16, 1974. The respondents wrote the Court on May 20, 1974, a copy of which was sent to Allison, informing him that the superintendent of the Graham Unit was a notary public and that his witnesses might appear before him to execute any affidavits. Subsequently, on May 17, 1974, the petitioner wrote Judge Gordon again. He wrote that he had received a letter from his mother indicating that the papers had been notarized but were destroyed by the notary public. In response to that charge, May 22, 1974, our Clerk of Court, Carmon J. Stuart, Esquire, was directed to write Mr. Allison. That letter suggested that Allison submit to the Court an affidavit of his mother, or anyone else who had first-hand knowledge of the fact, that a notarized statement in Allison's behalf was destroyed, giving the name of the person who destroyed it and describing the circumstances. Mr. Stuart also suggested that if Allison's codefendant was willing to make a statement and was unable to get it notarized that he document his efforts and send it to the Court. No further communication was received from the petitioner until 6 August 1974 when he wrote complaining of the disparity of sentences given him and his codefendant.

It is submitted that *Santobello, supra.*, stands for the proposition that when a petitioner furnishes evidence that plea bargaining has taken place *and* that promises made to induce his plea were not kept, the Court must go behind the transcript of his plea of guilty, regardless of the inconsistency existing between his in-court declarations under oath and his subsequent statements.

It is submitted that Allison has been given ample opportunity to support his allegations of plea bargaining and to show that his plea was involuntarily induced by an unkept promise. Having failed in this regard, IT IS RECOMMENDED that an Order be entered dismissing his petition for rehearing.

Herman Amasa Smith
United States Magistrate

14 August 1974

PETITIONER'S MOTION FOR RECONSIDERATION FILED SEPTEMBER 9, 1974 IN U.S. DISTRICT COURT

(Caption omitted in printing)

Petitioner is in this court pursuant to Action, Re Case No. C-71-G-73, wherein the denial order issued in this case was received by petitioner August 16, 1974. In that circumstance, facts and issues have changed since the date of the order of denial and receipt of the same by petitioner, and for reasons set out further in this instant action, petitioner moves this court for process wherein reconsideration for order of denial will be Judicially litigated and upon the lawful conclusion thereof, issue orders upon the merits and legal premise:

1.

Petitioner reiterates the allegations set out in the original application for writ of habeas corpus in this action.

2.

Petitioner attaches hereto, making the exhibit a part of this instant action. Attached as exhibit A.

3.

Peitioner has had physical difficulties as this case progressed through process herein, in obtaining sworn statements from his Co-defendant, one Dana Eugene Lastee, due to the locations of incarceration of said Co-defendant, and mail difficulties, cumulating into a lack of communication.

4.

That upon the date, August 24, 1974, Petitioner was able to obtain a statement, supported by witnesse that a plea bargaining took place and that promise made to induce his plea, were not kept. See Exhibit A. Hereof, offered in support of allegations in this case.

WHEREFORE, petitioner having shown the court a valid basis for reconsideration of the order denying petitioner relief

as set out in the habeas corpus writ in this case, giving affidavit support to his allegations of plea bargaining and involuntary plea induced by unkept promise, petitioner demans justice, and moves this court to reconsider the allegations of this case as set out herein, granting petitioner relief as prayed for.

For this requested relief, and any or further relief deemed just by this court, petitioner will forever move and pray.

/s/ Gary Darrell Allison
Petitioner

(Verification omitted in printing)

ATTACHMENT TO MOTION FOR RECONSIDERATION FILED SEPTEMBER 9, 1974 IN U.S. DISTRICT COURT

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

BILL OF INFORMATION

I, Dana Eugene Laster, do swear that I was present when my co-defendant, Gary Darrell Allison and his attorney, Mr. Glen Pickard, were discussing entering a plea in court. I heard Mr. Pickard tell Mr. Allison, that if he would plead guilty to Attempted Safe Robery, he could "get him off", with 10 years. Mr. Pickard also told Mr. Allison that if he did not plead guilty, that the jury would find him guilty anyway because of his past record. Mr. Allison received 17 to 21 years while I only received 5 to 8 years for the same charge. Mr. Pickard also stated he had talked it over with the judge and prosecutor and they had agreed to 10 years. To the above statement, I affix my signature and swear before wittness that the same is true and factual to the best of my knowledge and belief.

/s/ Dana Eugene Laster
Co-Defendant

Wittnesses by:

Frank K. Griggs
Charles Thomas King
Paul Grimsley

This the 24th day of August, 1974.

COURT'S FINAL ORDER DENYING MOTION TO REOPEN FILED SEPTEMBER 26, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GREENSBORO DIVISION

GARY DARRELL ALLISON, Petitioner,	)	
v.	)	
DR. STANLEY BLACKLEDGE, Warden, Central Prison, Raleigh, N. C. and STATE OF NORTH CAROLINA, Respondents.	)	C-71-G-73

ORDER

GORDON, Chief Judge

By Memorandum Opinion and Order entered August 28, 1973, this Court denied state court prisoner Allison's application for a writ of habeas corpus. On September 4, 1973, he filed a petition for rehearing. On August 16, 1974, the action was ordered dismissed after the petitioner had been given several opportunities to file supporting documents.

On September 9, 1974, the petitioner filed again a motion for reconsideration.

The motion is denied and the action ORDERED closed. The Court notes that while his motion for reconsideration was notarized, the purported "Bill of Information" attached to the motion for consideration as an affidavit is simply an unnotarized statement by petitioner's co-defendant.

For the foregoing reasons, IT IS HEREBY ORDERED that the action be dismissed.

Eugene A. Gordon
United States District Judge

September 26, 1974

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT REVERSING DISTRICT COURT, FILED APRIL 13, 1976

This opinion is omitted from the Appendix, having been included in the Petition for Certiorari at pp. 23-32.